

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1134 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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GOVINDJI RAMJI

Versus

TAPULAL NATHALAL DASANI  
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Appearance:

MR JR NANAVATI for Petitioner

MS NIMISHA A THACKER for Respondent No. 1  
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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 01/09/2000

ORAL JUDGEMENT

Mr J.R. Nanavati, learned counsel for the

revisionist has been heard.

2 This revision is directed against non-concurrent judgement and decree of the lower appellate Court dated 30.4.1985 reversing the decree of the trial Court and granting decree for possession of the demised premises to the landlord-respondent. The revision has been filed under Section 29(2) of the Bombay Rent Act.

3 The landlord filed suit for eviction of the tenant-revisionist alleging that the tenant was let out disputed accommodation on Rs.20 per month. He fell in arrears of rent from 20.11.1970 to 19.11.1979 amounting to Rs.2,180/-. Notice of demand was served upon the tenant but he did not pay the arrears of rent within amonth from the date of service of the notice. Eviction was also sought on another ground that the shop was kept closed and was not used for a continuous period of six months before the institution of the suit for the purpose for which it was let out.

4 The tenant-revisionist contested the suit denying that the standard rent is Rs.20 per month. He also denied that the suit premises was not used for a continuous period of six months preceding the institution of the suit. He further pleaded that immediately on receipt of the notice, he filed an application for fixation of standard rent which was registered as Civil Misc. Application No.2 of 1978 and since no order was passed fixing the standard rent, he could not deposit the rent in the Court. According to him, the standard rent should have been Rs.10/- per month.

5 These two cases, namely, eviction suit and the application for fixation of the standard rent, were consolidated and decided by the trial Court through a common judgement.

6 The trial Court found that the standard rent should be Rs.20/- per month. It further found that the landlord failed to establish that the tenant had not used the suit premises for a continuous period of six months preceding the date of institution of the suit. It further found that the landlord failed to establish his case u/s 12(3)(a) of the Bombay Rent Act. Consequently, the suit for eviction was dismissed.

7 The landlord preferred appeal and the tenant filed cross objections against fixation of standard rent at Rs.20/- per month.

8 The appellate Court found that the standard rent should have been Rs.15/- per month besides taxes and electric charges. With these findings the cross objections were partly allowed. No revision had been filed by the tenant against this portion of the judgement of the lower appellate Court. The lower appellate Court further found that the tenant failed to make mandatory compliance of Section 12(3)(b) of the Bombay Rent Act. As such he lost protection against eviction. Consequently, decree for eviction was passed against the tenant. Hence this revision of the tenant.

9 From the allegations made in the complaint it is clear that the eviction was sought on two grounds. The first was that the tenant was in arrears of rent for a period exceeding six months which he did not pay despite service of notice of demand within one month from the date of such service. The second ground was non-user of the suit premises for a period of six months before institution of suit. The second ground was not found to have been established by the landlord by both the Courts below. Consequently, that ground does not require any consideration in this revision.

10 From the averments made in the plaint and the discussion made by the two courts below, it clearly transpires that the suit for eviction on grounds of arrears of rent was filed by the landlord u/s 12(3)(a) of the Bombay Rent Act inasmuch as the allegation was that the tenant did not pay the arrears of rent exceeding six months after service of notice of demand and within a period of one month of service of such notice. It is undisputed that the tenant raised dispute of standard rent within the statutory period. It is alleged in the written statement that immediately after receipt of the notice the tenant filed Civil Misc Application No.2 of 1978 for fixation of standard rent, which was pending. Consequently, the dispute of standard rent was made by the tenant within the stipulated period, namely, within a month of service of notice of demand. If dispute of standard rent was raised by the tenant and it was not decided by the trial Court, but was decided along with the judgement, it will be deemed that the case was not covered under Section 12(3)(a) of the Bombay Rent Act. Inter alia if dispute of standard rent was raised by the tenant, the suit for eviction could not be filed u/s 12(3)(a) of the Bombay Rent Act. The lower appellate Court however observed that the case was covered u/s 12(3)(b) of the Act and since the tenant did not make mandatory compliance of Section 12(3)(a) inasmuch he

failed to make the deposit of the rent regularly in appeal, he was not entitled to protection of Section 12(3)(b) of the Act and decree for eviction was passed.

11 If the landlord establishes that the case is covered by Section 12(3)(a), the Court should have no option but to decree the suit and the tenant hardly has any protection under Section 12(3)(b) of the Bombay Rent Act. However, if the case is not covered by Section 12(3)(a) of the Act, the landlord cannot claim decree for eviction. This aspect was considered by me in two cases of this Court in the case of KASAMBHAI ISMAILBHAI V. B.K. PATEL reported in 1998(2) GLH 606 AND in the case of NARBHERAM AMBALAL & ORS. V. JAYANTILAL DAHYABHAI KHARVA reported in 1998 (2) GLH 550. In both the cases relying upon the Apex Court AIR 1995 SC 448 it was held that having failed in his case u/s 12(3)(a) the landlord cannot switch to rely on Section 12(3)(b) of the Act. It was further held that Section 12(3)(b) is entirely different. The Apex Court in N.M. Engineering v. Narendra Viridi reported in AIR 1995 SC 448 had an occasion to consider this aspect of the matter and observed as under:-

"In other cases Section (3)(b) is applicable.

The cases covered thereunder are for arrears of rent of less than six months."

It is thus clear from this observation of the Apex Court that for the purposes of Section 12(3)(b) the expression in other cases inter alia was considered to have direct reference to the cases where arrears of rent claimed by the landlord were for a period of less than six months and the like. Consequently, it is not the option of the landlord that once he fails in his case u/s 12(3)(a) he can switch to rely on Section 12(3)(b) claiming decree for eviction against the tenant. Moreover, it is apparent that the view taken by the lower appellate Court that the tenant did not make statutory compliance of Section 12(3)(b) is also not correct in the eyes of law. No doubt, the trial Court fixed the standard rent at Rs.20 per month but the tenant was not satisfied with this finding and filed cross objections in the appeal filed by the landlord and the appellate Court reduced the quantum of standard rent to Rs.15/- per month besides taxes and electric charges. Consequently, till the cross objections of the tenant was decided by the appellate Court, it will be deemed that the dispute of standard rent was raised within time and it was not

finally decided and consequently the tenant cannot be blamed for not making statutory compliance of provisions of Section 12(3)(b).

12 For the reasons stated above, I am of the view that the lower Appellate Court was in obvious error in passing a decree for eviction of the tenant. Consequently, revision has to be allowed and is hereby allowed. The judgement and decree of the lower appellate Court is partly reversed. It is maintained so far as fixing of standard rent of Rs.15/- is concerned. However, it is set aside so far as it grants decree for eviction. The suit of the respondent for eviction of the revisionist from the disputed accommodation is dismissed. No order as to costs.

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